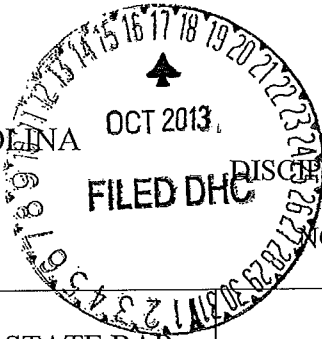


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
13 DHC 31

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

D. BERNARD ALSTON, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of the Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, D. Bernard Alston ("Defendant" or "Alston"), was admitted to the North Carolina State Bar on 24 August 1985, and was, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant periods referred to herein, Alston was actively suspended from the practice of law in the State of North Carolina pursuant to the Orders of Discipline issued by the Disciplinary Hearing Commission in case numbers 07 DHC 21 (entered 17 April 2008) and 09 DHC 19 (entered 18 January 2010).

4. In or around January 2012, Robert Hargrove ("Hargrove") contacted Alston concerning the purchase of real property located at 272 Whitten Ave., Henderson, North Carolina (hereinafter "Hargrove transaction").

5. Hargrove informed Alston from the beginning of their interaction that he wanted to obtain title insurance for the property that he intended to purchase through the Hargrove transaction.

6. On or around 20 January 2012, Alston received a \$200.00 fee from Hargrove to conduct a title examination for the property.

7. Alston asked attorney Yolanda Feimster ("Feimster") to serve as the closing attorney in the Hargrove transaction.
8. Alston offered to prepare the necessary closing documents for the Hargrove transaction under Feimster's name.
9. Feimster declined Alston's request and instructed Alston not to include her name on any documents associated with the Hargrove transaction.
10. Alston subsequently prepared deeds for the Hargrove transaction and listed Feimster as the individual who prepared the deeds.
11. Feimster never reviewed the deeds as prepared by Alston, never consented to her name appearing on the deeds, and did not know of the deeds' existence.
12. Alston also asked attorney Garey Ballance ("Ballance") to serve as closing attorney on the Hargrove transaction, stating Feimster had already prepared the deeds to be used in the transaction.
13. Alston offered to prepare the remaining necessary closing documents for the Hargrove transaction under Ballance's name.
14. Ballance agreed to serve as closing attorney in the Hargrove transaction so long as Hargrove did not require title insurance because Ballance did not have liability coverage as required by title insurers.
15. Alston did not inform Ballance that Hargrove wanted to obtain title insurance as Hargrove previously indicated to Alston.
16. Alston and Ballance together prepared the HUD-1 Settlement Statement for the Hargrove transaction and listed Ballance as the closing attorney on the form.
17. Ballance subsequently learned that Hargrove wanted to obtain title insurance for the property he intended to purchase through the Hargrove transaction.
18. Upon learning of Hargrove's desire for title insurance, Ballance withdrew from the representation.
19. Ballance asked Alston to inform Hargrove that he needed another attorney to serve as closing attorney in the transaction.
20. Due to his inability to serve as the closing attorney in the Hargrove transaction, Ballance provided the previously prepared closing documents to Alston for destruction.
21. Alston did not inform Hargrove that Ballance withdrew from acting as closing attorney in the Hargrove transaction.

22. Alston did not destroy the closing documents previously prepared by Alston and Ballance for the Hargrove transaction.
23. On or about 6 April 2012, Alston performed the closing for the Hargrove transaction after business hours and outside the presence of any other attorney.
24. Alston used the HUD-1 Settlement Statement purportedly approved by Ballance to conduct the closing.
25. Alston gave Hargrove the false impression that Alston was acting pursuant to Ballance's instruction and that Ballance remained the closing attorney for the transaction.
26. Alston used the deeds purportedly prepared by Feimster to conduct the closing.
27. Alston gave Hargrove the false impression that the deeds used at closing were prepared and approved by a licensed North Carolina attorney.
28. Alston gave Hargrove the false impression that title insurance had been obtained for the property.
29. Alston collected from Hargrove a check made payable to Investors Title in the amount of \$51.25 to pay for the purported premium on title insurance.
30. Alston never forwarded Hargrove's check to Investors Title.
31. Alston received a \$425.00 fee from Hargrove for closing the Hargrove transaction.
32. On or about 9 April 2012, Alston filed the deeds purportedly prepared by Feimster with the Vance County Register of Deeds.
33. In or around April and May 2012, Alston met attorney Lori Renn ("Renn") at the Vance County Register of Deeds. Alston asked Renn if she would certify title and obtain title insurance for the Hargrove transaction.
34. Alston falsely informed Renn that Ballance served as the closing attorney for the Hargrove transaction and that Ballance had performed the title search in the Hargrove transaction.
35. Upon Renn's examination of title, Renn noticed immediate issues concerning possible surviving heirs and/or spouses of the sellers in the Hargrove transaction that were not clearly documented in the official record. Renn prepared a Family Affidavit for Alston to give to the sellers' various family members in order to clear the title.

36. Alston never had the sellers execute the Family Affidavit as prepared and suggested by Renn.

37. Alston failed to contact or follow-up with Renn concerning the status of the title search.

38. Hargrove did not obtain title insurance through the Hargrove transaction. Hargrove later retained a new attorney to obtain title insurance on the property he acquired through the Hargrove transaction.

39. Feimster, Ballance, and Renn received no fee in conjunction with the Hargrove transaction.

40. Alston was the only acting party to receive payment for services concerning the Hargrove transaction.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By accepting payment for legal services performed while suspended from the practice of law, Alston committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (b) By acting as closing attorney for the Hargrove transaction – including preparing deeds for the transaction, filing the deeds with the Vance County Register of Deeds, and conducting the Hargrove transaction using documents wherein the attorneys listed on the documents did not actually participate in the closing and did not consent to the representation – while suspended from the practice of law, Alston engaged in the unauthorized practice of law in violation of Rule 5.5(a), maintained a systematic and continuous presence in his jurisdiction and/or held himself out to the public as permitted to practice law in that jurisdiction in violation of Rule 5.5(b), committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (c) By misleading Hargrove, Feimster, Ballance, and Renn regarding the actual status of the Hargrove transaction, Alston engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C. Admin. Code 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

This the 17th day of October, 2013.



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Margaret M. Hunt, Chair  
Grievance Committee



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